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**OFFICE OF PETITIONS**

In re Application of	:	
Tariq M. Malik, et al.	:	
Application No. 10/729,467	:	DECISION DISMISSING
Filed: December 6, 2003	:	PETITION
Attorney Docket No. 920036-94963	:	

This is a decision on the petition filed February 19, 2004, requesting that the above-identified application be accorded a filing date of December 5, 2003, rather than the presently accorded date of December 6, 2003.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)). No extensions of time pursuant to the provisions of 37 CFR 1.136 are permitted. If reconsideration is not requested within the time period specified above, this application will be forwarded to Technology Center 1700 for examination in due course with the presently accorded filing date of December 6, 2003.

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on December 5, 2003, pursuant to the requirements of 37 CFR 1.10. Petitioner has provided a copy of Express Mail label EV272186282US to support the allegations that the application papers were deposited on December 5, 2003. However, the Express Mail Label does not contain a "date-in" or any other official United States Postal Service (USPS) notation to confirm the package was deposited on December 5, 2003. Petitioner has also supplied a copy of the "USPS Track & Confirm Shipment History" which shows that the package was accepted on December 6, 2003 at 1:52 pm in Merrillville, IN. Petitioner argues that the package was deposited in Chicago, IL and somehow wound up in Merrillville, IN.

Paragraph (a) of 37 CFR 1.10 states that:

"Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States

Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

There is no evidence provided to support petitioner's allegations and petitioner's arguments are not persuasive. 37 CFR 1.10(d) sets forth procedures for filing a petition where the "date-in" or other official notation is incorrectly entered by the USPS. Such a petition should:

(A) be filed promptly after the person becomes aware that the Office has accorded , or will accord, a filing date based upon an incorrect entry by the USPS;

(B) include a showing that the number of the "Express Mail" mailing label was placed on each piece of correspondence prior to the original mailing; and

(C) include a showing that the correspondence was deposited as "Express Mail" prior to the last scheduled pickup on the requested filing date.

The showing under 37 CFR 1.10(d) must be corroborated by (1) evidence from the USPS, or (2) evidence that came into being after deposit and within one business day of the deposit of the correspondence as "Express Mail." Evidence from the USPSO may be the "Express Mail" Corporate Account Mail Statement. Evidence that came into being within one day after the deposit of the correspondence as "Express Mail" may be in the form of a log book which contains information such as the "Express Mail" number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log.

A petition alleging that the USPS erred in entering the "date-in" will be denied if it is supported only by evidence (other than from the USPS) which was:

(A) created prior to the deposit of the correspondence as "Express Mail" with the USPS (e.g., an application transmittal cover letter, or a client letter prepared prior to the deposit of the correspondence);

(B) created more than one business day after the deposit of the correspondence as "Express Mail" (e.g., an affidavit or declaration prepared more than one business day after the correspondence was deposited with the USPS as "Express Mail").

37 CFR 1.10(f) provides that the Office may require additional evidence to determine whether the correspondence was deposited as "Express Mail" with the USPS on the date in question.

Although petitioner asserts that the package in question was deposited as "Express Mail" in Chicago, the USPS "Track & Confirm Shipment History" shows the package was accepted at Merrillville, IN. Petitioner must provide evidence to corroborate the assertions that the package was, in fact, deposited in

Chicago on December 5, 2003. Unless petitioner can prove these assertions, this application will retain the accorded filing date of December 6, 2003.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:                      Mail Stop PETITION  
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Telephone inquiries concerning this matter may be directed to Marianne Morgan at (703) 306-3475.



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